

Staff Summary Report



Council Meeting Date: July 22, 2008

Agenda Item Number: _____

SUBJECT: Request approval to renew the Intergovernmental Agreement with the U.S. Department of Agriculture, Wildlife Services Division for fiscal year 2008/2009 to provide wildlife management assistance for the Rio Salado Project.

DOCUMENT NAME: 20080722cdnr01 **RIO SALADO MASTER PLAN (0112-07-03)**

SUPPORTING DOCS: No

COMMENTS: Renewal of Intergovernmental Agreement with the U.S. Department of Agriculture, Wildlife Services Division. Total cost of the contract shall not exceed \$25,000.

PREPARED BY: Nancy Ryan, Rio Salado Project Manager, 350-8096

REVIEWED BY: Chris Salomone, Community Development Manager, 350-8294
Jeff Kulaga, Assistant City Manager, 350-8844

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney, 858-2187

FISCAL NOTE: Sufficient funds for this program are available within the Rio Salado Account 4410-6656.

RECOMMENDATION: Authorize the Mayor to execute the renewal of Intergovernmental Agreement with the U.S. Department of Agriculture, Wildlife Services Division.

ADDITIONAL INFO: Since 2000, the City of Tempe has partnered with the USDA to implement a wildlife management plan to safely manage wildlife in the Salt River corridor. The USDA – Wildlife Services participates in a weekly monitoring, twice yearly meetings and an annual report of their findings and recommendations related to the management of wildlife in Rio Salado (within the five-mile radius of Sky Harbor airport). The agreement provides access to resources and expertise in the event that hazardous or other special situations are identified.

The data collected by the USDA assists the City with monitoring habitat restoration areas and is used to prepare annual reports for the Safe Harbor Agreement with the US Fish and Wildlife Service. Staff believes that the continued retention of a wildlife biologist trained to monitor and identify potential hazards to aviation, provides the greatest degree of safety to the public while supporting the restoration of wildlife habitat in the Salt River.

INTERGOVERNMENTAL AGREEMENT NO. C2000-151G
(2008 Renewal)

This Intergovernmental Agreement (2008 Renewal) ("Agreement") is entered into pursuant to Arizona Revised Statute ("A.R.S.") Section 11-952 between the City of Tempe ("City") and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services ("WS").

RECITALS

- A. Authority exists under the Act of March 2, 1931 (46 Stat. 1469; 7 U.S.C. 426-426b) as amended, and under the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988, (Public Law 100-202, 7 U.S.C. 426c) for APHIS-WS, acting under the Secretary of Agriculture, to conduct a program of wildlife services with respect to injurious animal species and to cooperate and enter into agreements with States, local jurisdictions, individuals, and public and private agencies, organizations, and institutions in the control of nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases.
- B. The City is empowered by the City Charter, Chapter II, Section 2 (i), to enter into this Agreement.
- C. The City is empowered to enter into this Agreement pursuant to A.R.S. 11-952.
- D. The City desires to renew the Intergovernmental Agreement Number C2000-151C (originally approved in Resolution No. 99.68) (the "Existing IGA"), which will expire on June 30, 2008. Capitalized terms used herein without definition shall have the meanings given such terms in the Existing IGA.
- E. The City desires to obtain, and WS desires to provide, the consultant services described herein for the Town Lake area in Tempe, Arizona.

NOW, THEREFORE, the parties agree as follows:

1. **PURPOSE OF AGREEMENT**

The purpose of this Agreement is to continue to undertake a program for the management of potential wildlife hazards to aircraft caused by wild or feral mammals or birds on properties under the City's control or jurisdiction. The WS State Director will coordinate efforts to manage aircraft hazards caused by wildlife through employment of a Wildlife Biologist assigned to the project. A Wildlife Biologist, certified in airport operations, will implement an integrated wildlife hazard management plan utilizing all available non-lethal and lethal management techniques to reduce threats to air safety. These programs were begun pursuant to the existing IGA.

2. **DESCRIPTION OF SERVICES**

WS will furnish a Wildlife Biologist, trained and certified in wildlife hazard management at airports, to implement operations controls to monitor and reduce Wildlife Aircraft Strike Hazards around Town Lake.

APHIS-WS has advised the City that other private sector service providers may be available to provide wildlife management services and notwithstanding these other options, the City requests that APHIS-WS provide wildlife management services as stated under the terms of this agreement and the existing IGA.

3. **TERM OF AGREEMENT**

This Agreement will constitute the Work/Budget Plan for the period of July 1, 2008 through June 30, 2009 and the existing IGA is extended for the same period.

4. **PAYMENT OF AMOUNT**

A. The City agrees to pay for actual costs incurred by WS in providing direct program support, not to exceed \$25,000. Such expenses may include, but not be limited to: salary/benefits, travel, transportation, supplies, equipment, and administrative costs. An estimated itemization of expenses is listed below. However, funds may be distributed to other categories if required.

Salary/Benefits	\$20,250
Travel	\$ 500
Transportation	\$ 3,000
Supplies/Equipment	\$ 1,250
Total	\$25,000

B. A Statement of Services will be prepared by WS and sent to the City quarterly. Payment will be made within 30 days of receipt of each billing.

C. In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by WS are due and payable within 30 days of receipt. The DCIA requires that all debt older than 120 days be forwarded to debt collection centers or commercial collection agencies for more aggressive action. Debtors have the option to verify, challenge, and compromise claims, and have access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

5. **REPORTS**

WS will provide the City with an annual report covering the full year's activities. All reports, information, data, plans and other materials prepared by WS in performance of this Agreement shall be acknowledged as having been funded in part by the City. WS shall retain title and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all information prepared under this Agreement.

6. **AVAILABILITY OF FUNDS**

This Agreement shall be contingent upon the availability of funds and manpower appropriated by the Congress of the United States, the State of Arizona, and funds available to the City for the purposes of this Agreement.

7. **SEPARATE AGREEMENTS**

Nothing in this Agreement shall prevent any other state, agency,

organization, or individual from entering into separate agreements with WS for the purpose of wildlife damage management.

8. **CONGRESS**

Pursuant to Section 22, Title 41, United States Code of Federal Regulation, no member of or delegate to Congress shall be admitted to any share of part of this Agreement or to any benefit to arise there from.

9. **WILDLIFE DAMAGE MANAGEMENT ACTIVITIES**

All wildlife damage management activities will be conducted in accordance with applicable Federal, State, and Local laws and regulations.

The performance of wildlife damage management actions by WS under this agreement is contingent upon a determination by WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.

10. **TERMINATION**

Each party shall have the right to terminate this Agreement by mailing the other party written notice of termination by certified mail, return receipt requested, at least sixty (60) days prior to the effective date of said termination. In the event this Agreement is canceled by the City, the City shall remain responsible for payment to WS for all work performed to the date of termination.

11. **ASSIGNMENT AND DELEGATION**

Neither party may assign any rights or obligations hereunder without the express, written, prior consent of the other party.

12. **CONFLICT OF INTEREST**

The parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. 38-511, the provisions of which are incorporated.

13. **INSPECTIONS AND AUDITS**

All books, accounts, reports, files, and other records relating to this Agreement shall be kept for five (5) years after termination of this Agreement, and shall be subject at all times to inspection and audit by either party. Such records shall be produced at the requesting party's principal office within a reasonable time after their request.

14. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding of the parties hereto. There are no representations or provisions other than those contained herein. Any amendment or modification of this Agreement shall be made only in writing and signed by both parties.

15. **INVALIDITY OF PART OF THIS AGREEMENT**

The parties agree that should any part of this Agreement be held to be invalid or void, the remainder of this Agreement shall remain in full force and effect and shall be binding upon the parties.

16. **INDEMINITY PROVISION**

APHIS assumes no liability for any actions or activities conducted under this agreement except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1236(b), 2401(b), 2671-2680).

17. **NOTICES**

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this Agreement, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as indicated below:

If to City: Rio Salado Manager
 City of Tempe
 P.O. Box 5002
 Tempe, Arizona 85280
 Telephone (480) 350-2952

If to WS: State Director

USDA, APHIS, Wildlife Services
8836 N. 23rd Ave., Suite 2
Phoenix, Arizona 85021
Telephone (602)870-2081

18. **INDEPENDENT CONTRACTOR STATUS**

The parties agree that WS is providing the services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of principal and independent contractor. Neither WS nor any of WS' agents, employees or helpers shall be deemed to be the employee, agent, or servant of the City. City is interested in only the results obtained under this Agreement; the manner, means, and mode of completing the same are under the sole management of WS.

19. **FISCAL YEAR CLAUSE**

The parties recognize that the continuation of this Agreement after the close of any given fiscal year of the City, which fiscal years end on June 30 of that year, shall be subject to the approval of the budget of the City providing for or veering this item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget. The City agrees to recommend inclusion of this item in each applicable budget during the term of this Agreement.

20. **GOVERNING LAW**

This Agreement shall be construed under the Federal and State Law and shall incorporate by reference all laws governing the interagency agreements and mandatory contract provisions required by statute.

21. **AUTHORITY**

This Agreement is in proper legal form and is within the powers and authority granted under the laws of the State of Arizona to those parties represented by undersigned legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) shown below.

CITY OF TEMPE

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

U.S. DEPARTMENT OF AGRICULTURE
APHIS, WILDLIFE SERVICES

By: _____
State Director

Date: _____

By: _____
Director, Western Region

Date: _____

